IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

INCOME TAX APPEAL NO.476 OF 2001
(Old No. 32 of 2000)

1. The Commissioner of Income Tax, Meerut
2. The Assistant Commissioner of Income Tax, Circle, Dehradun

..... **Appellants**

Versus

M/s Green Gold Tree Farms (P) Ltd. Dehradun

..... **Respondent**

Dated: March 28, 2006

Sri P. Maulekhi, learned standing counsel for the appellants

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

This is an appeal against the judgment and order dated 11.10.1999 passed by Income Tax Appellate Tribunal 'A', New Delhi in ITAT No.4941/Del/93. The matter in dispute relates to Assessment Year 1990-91. The question framed in the Memo of Appeal is as under:-

> "***Whether on facts and in the circumstances of the case, ld. Income Tax Appellate Tribunal was legally justified in confirming the view of the learned CIT(A) who held that the sale proceeds of the plants raised in the nursery on the land constituted the income from agriculture deleting Rs.4,64,232/- accordingly?***

2. The assessee is a private limited company in cultivation of Poplar Trees. The activities being with the

preparation of land, tiling and manning. The cuttings are then planted and irrigated followed by spraying of pesticides and fertilizers. The produce in the form of poplar plants about one year old and are sold to farmers who wish to do poplar afforestation. This part of assessee's activity is called Nursery operations. Subsequent to the Nursery Operations, the appellant provides Extension Services to the farmers in carrying out the afforestation. The income from Nursery Operations was claimed as agricultural income exempt from tax. In the extension services, the appellant had returned loss. The Assessing Officer rejected the appellant's claim that income from Nursery Operations constituted agricultural income not liable to tax. The profits from Nursery Operations were estimated @Rs.2/- per plant for which extension charges were estimated @25% of gross receipts. Thus, total income was determined at Rs.6,26,410/- consisting of income of Rs.4,64,232/- from Nursery Operations and Rs.1,62,177/- from extension services. Aggrieved, the assessee preferred an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide his order deleted the income of Rs.4,64,232/- as this amount has been held to be agricultural income and accordingly partly allowed the appeal. Being aggrieved, the Department preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal after perusing the evidence on record dismissed the appeal of the Department and confirmed the judgment passed by Commissioner (Appeals). Feeling aggrieved, the Revenue has come up in the appeal.

3. We have heard learned counsel for the parties and perused the impugned judgment as well as the question suggested by the appellants in the appeal. The aforesaid question framed in the appeal is not the substantial question of law for our determination and

hence the factual question stand decided by the concurrent finding of fact.

4. The appeal is dismissed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang

3. The facts and circumstances of the case are identical to the facts in Income Tax Appeal No.239 of 2001, Commissioner of Income Tax and another Vs. M/s ONGC as agent of M/s Foramer France, Dehradun, which was decided on December 15, 2005. In the said appeal, the been answered in favour of the Revenue.

4. Accordingly, the appeal is allowed. The question is answered in favour of the Revenue.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang